

REMARKS

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

I. CLAIM STATUS & AMENDMENTS

Claims 1-15 were pending in this application when last examined, and claims 1-3, 5-8 and 10-15 were rejected.

Claim 9 was objected to.

Applicants are grateful for the Examiner's indication that claim 4 is allowable.

Applicants also thank Examiner Priebe for the proposed claim amendments set forth on pages 13-15 of the Office Action and the indication that such amendments would place the application in condition for allowance. It is respectfully submitted that the claims have been amended as suggested by the Examiner. Accordingly, the application should now be condition for allowance.

Claims 1 and 10 are amended to effect the changes suggested by the Examiner.

Claims 2 and 11 are amended to recite "heatshock promoter directed neomycin phosphotransferase gene" to be consistent with and to provide the proper antecedent basis for the language in amended claim 1.

Claims 3, 5 and 6 are amended to recite "promoterless reporter gene" to be consistent with and to provide the proper antecedent basis for the language in amended claim 1.

Claim 9 is amended to recite "a pCasperhs" as suggested by the Examiner.

Applicants are grateful for the Examiner's withdrawal of the Restriction Requirement and the suggestion to rejoin withdrawn cancelled claims 16-19 of non-elected Group II with elected Group I. Accordingly, new claims 20-22 have been added, which are consistent with this suggestion. Support for new claims 20-22 can be found in original claims 16-18.

New claim 23 corresponds to original claim 13 rewritten in independent form.

Claims 7-8 and 12-13 are cancelled without prejudice or disclaimer thereto. Applicants reserve the right to file a continuation or divisional application on any cancelled subject matter.

Claims 1-6, 9-11 and 20-23 are pending upon entry of this amendment.

The specification is amended to include SEQ ID NOS for the sequences disclosed in Fig. 6. These SEQ ID NOS were incorporated into the paper copy and computer readable form (CRF) of the Sequence Listing filed in the responses of August 15, 2002 and June 27, 2002.

No new matter has been added by the above amendments.

II. OBJECTION TO THE SPECIFICATION

On pages 4-5, the specification was objected to for failing to comply with the Sequence Rules for not including SEQ ID NOS for the sequences disclosed in Fig. 6. It was also indicated that the amendment in the response dated June 27, 2002 to correct this objection was not entered on the basis that it fails to comply with the rules for entry of amendments.

It is respectfully submitted that the present amendment overcomes this objection. As noted above, the amended specification now includes SEQ ID NOS: 2-7 for the sequences disclosed in Fig. 6.

In view of the above, the objection to the specification is untenable and should be withdrawn.

III. CLAIM OBJECTIONS

On pages 5-6, claims 5, 7, 8, 13 14 and 15 were objected to for containing minor informalities.

It is respectfully submitted that the present amendment overcomes these objections. The objected claims were either amended as suggested by the Examiner or canceled.

IV. WRITTEN DESCRIPTION REJECTION

On pages 6-8, claims 1-3, 5-7 and 10-14 were rejected under 35 U.S.C. § 112, first paragraph, on the basis that the specification lacks written description support for the recitation “promoter directed drug resistance gene.”

It is respectfully submitted that the present amendment overcomes this rejection. The rejected claims were amended as suggested by the Examiner to be limited to the promoter disclosed in the specification.

In view of this amendment, the rejection of claims 1-3, 5-7 and 10-14 under 35 U.S.C. § 112, first paragraph, is untenable and should be withdrawn.

V. ENABLEMENT REJECTIONS

On pages 8-9, claims 1-3, 5-7 and 10-15 were rejected under 35 U.S.C. § 112, first paragraph, on the basis that the specification lacks enablement, because the claims do not require the inclusion of the “nucleotides” in a P-element.

On pages 9-10, claims 1-3, 5-7 and 10-14 were also rejected under 35 U.S.C. § 112, first paragraph, on the basis that the specification is enabling only for embodiments where the drug resistance gene encodes neomycin phosphotransferase, and not for other drug resistance genes.

It is respectfully submitted that the present amendment overcomes these rejections as the claims were amended as suggested to include a P-element and to specify the use of the drug resistance gene encodes neomycin phosphotransferase.

In view of this amendment, the rejections of claims 1-3, 5-7 and 10-14 under 35 U.S.C. § 112, first paragraph, are untenable and should be withdrawn.

VI. INDEFINITENESS REJECTION

Claims 1-3 and 5-15 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for the reasons set forth on pages 10-13.

It is respectfully submitted that the present amendment overcomes this rejection as the claims were either amended as suggested by the Examiner or cancelled.

VII. ALLOWABLE SUBJECT MATTER

On page 13, it is indicated that claim 9 would be allowable if amended to overcome the 112 second paragraph indefiniteness rejection.

Claim 9 has been amended as suggested by the Examiner. Thus, this claim should now be in condition for allowance.

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is now in condition for allowance and early notice to that effect is hereby requested.

If it is determined that the application is not in condition for allowance, the Examiner is invited to telephone the undersigned attorney at the number below if he has any suggestions to expedite allowance of the present application.

Respectfully submitted,

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